

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOYCE N. RIDDICK and U.S. POSTAL SERVICE,  
WAKEFIELD STATION, Bronx, NY

*Docket No. 02-2324; Submitted on the Record;  
Issued January 7, 2003*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether appellant had any continuing disability or residuals after April 4, 2000, the date the Office of Workers' Compensation Programs terminated her compensation benefits, causally related to her June 1, 1998 accepted employment injury.

This case has previously been before the Board. Appellant was injured on June 1, 1998 when her chair was hit from behind injuring her back. The Office accepted appellant's claim for low back sprain and herniated nucleus pulposus L4-5 and L5-S1. By decision issued on November 20, 2001, the Board affirmed the Office's decisions of April 14 and December 5, 2000 terminating appellant's compensation benefits, but remanded the case for further proceedings concerning her continuing disability.<sup>1</sup> The Board found that there was a conflict in medical opinion between appellant's treating physician and two second opinion physicians. On remand, the Office referred appellant to Dr. Lawrence E. Miller for an impartial medical examination.

Dr. Miller submitted a narrative report dated January 29, 2002, indicating that he examined appellant and the medical evidence of record on January 29, 2002. He noted that appellant walked into the room with a cane and stated that she had numbness in her right hand due to the cane and that she also complained of intermittent pain in the cervical and lumbosacral area. He noted that she was wearing a 7" lumbosacral support and a cervical collar, both of which were removed for examination. On physical examination, Dr. Miller found that there was no muscle spasm and no loss of the cervical lordotic curve and that appellant could turn her head fully to the right and left and flex and extend it fully without any restriction. Dr. Miller found that she could stand on her toes and heels and squat with no restriction to the right and left, or on flexion and extension. He found that appellant could also bend forward more than 60 degrees and perform bilateral straight leg raises of 45 degrees, having no pain in her back or down her

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<sup>1</sup> Docket No. 01-840 (issued November 20, 2001). The factual background of the case is hereby incorporated by reference.

legs. Dr. Miller diagnosed resolved left knee, cervical and lumbosacral strain and sprain and concluded that appellant's current problems, which included intermittent back pain, a slight limp and not being able to stand on her left toes, were related to a nonwork-related incident occurring in 1991.<sup>2</sup> He stated:

"The claimant's subjective complaints are not supported by the objective findings. There also is no clinical evidence of a herniated disc in the lumbosacral spine at this time. In addition, even though the MRI [magnetic resonance imaging] was reported as positive, there is no clinical evidence of a herniated disc in the cervical spine, as none of the pains could be reproduced down either one of her arms.

"Based on clinical examination, with respect to the incident of June 1, 1998, there is no orthopedic-related disability ... the claimant is capable of pursuing gainful employment on a full-time basis and resuming her preincident level of activities, with no orthopedic restrictions or limitations.

"There are no objective findings or residual deficits noted with respect to the injuries allegedly sustained in the incident of June 1, 1998 demonstrated on clinical examination today. Therefore, orthopedic treatment, diagnostic testing, physiotherapy or surgical intervention is no longer medically necessary and additional treatment would be excessive."

By decision dated February 13, 2002, the Office found that appellant had no continuing disability causally related to the June 1, 1998 accepted employment injury.<sup>3</sup>

By letter dated May 14, 2002, appellant requested reconsideration and submitted a legal brief in support of her request. Appellant, through her counsel, alleged that Dr. Miller's report was of no probative value and should not be afforded the weight of the medical evidence. Appellant's counsel also noted that he submitted a new medical report from Dr. Ralph Yung dated March 11, 2002, however, this report is not found in the record.<sup>4</sup>

By decision dated July 1, 2002, the Office denied modification of the previous decision.<sup>5</sup>

The Board finds that appellant had no continuing disability or residuals after April 4, 2000, causally related to her June 1, 1998 accepted employment injury.

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<sup>2</sup> Appellant underwent left ankle surgery in 1991 as a result of a dog attack.

<sup>3</sup> The Board notes that the Office worded this decision as a termination when the issue was of continuing disability. The Board already affirmed the termination of appellant's compensation benefits effective April 4, 2000 in the prior appeal.

<sup>4</sup> Appellant submitted this report on appeal to the Board, however, the Board may not review this medical evidence since it was not before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

<sup>5</sup> By decision dated August 6, 2002, the Office also approved attorney's fees, which is not at issue in this case.

Under the Federal Employees' Compensation Act,<sup>6</sup> once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>7</sup> The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to employment.<sup>8</sup> After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant.<sup>9</sup> In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he or she had an employment-related disability which continued after termination of compensation benefits.<sup>10</sup>

In the November 20, 2001 decision, the Board determined that a conflict in medical opinion was created on whether appellant remained disabled due to her 1998 accepted low back sprain and herniated disc condition and remanded the case to the Office for further development. The Office properly referred appellant and the medical evidence of record to an impartial medical specialist to resolve the conflict.

In a complete and well-rationalized medical report and with the review of other medical reports of record, Dr. Miller opined that appellant's present condition was due to a nonwork-related injury from 1991. He found that appellant's subjective complaints were not supported by objective medical findings and opined that there was no evidence of a herniated disc in the lumbosacral spine. He opined that appellant had no disability with respect to the June 1, 1998 work injury and was capable of pursuing gainful employment on a full-time basis with no orthopedic restrictions or limitations.

When there exist opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>11</sup>

In this case, the Board finds that Dr. Miller's opinions are sufficiently well rationalized, were based upon his findings of an absence of objective symptomatology related to the back sprain and herniated disc and based upon a proper factual and medical background. As such, they must be accorded that special weight in establishing that appellant had no further disability or residuals requiring further treatment, causally related to the 1998 accepted employment injury.

On appeal, appellant's counsel contends that Dr. Miller gave no explanation for appellant's current symptoms. The Board notes that Dr. Miller specifically attributed appellant's intermittent pain and slight limp to the nonwork-related incident from 1991. Appellant's counsel

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<sup>6</sup> 5 U.S.C. §§ 8101-8193.

<sup>7</sup> *Charles E. Minniss*, 40 ECAB 708, 716 (1989).

<sup>8</sup> *Id.*

<sup>9</sup> *Virginia Davis-Banks*, 44 ECAB 389 (1993).

<sup>10</sup> *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

<sup>11</sup> *Carl Epstein*, 38 ECAB 539 (1987).

also alleged that a January 23, 2002 magnetic resonance imaging (MRI) report shows that appellant has continuing residuals. Dr. Miller addressed this point and stated that even though the MRI was reported as positive, there was no clinical evidence demonstrating a herniated disc in appellant's cervical spine. Lastly, appellant's counsel alleged that Dr. Miller's report was not based upon a proper factual background since he did not mention a statement of accepted facts in his report, and also referred to appellant's accepted June 1, 1998 work injury as "alleged." Dr. Miller indicated that appellant had worked as a letter carrier for the postal service and stopped working on September 10, 1998 due to pain. He also noted the date appellant returned to work and the date she subsequently stopped working. He also discussed the specifics of appellant's employment injury on June 1, 1998, how she was sitting in her chair when a gate struck her chair from behind. The Board also finds that Dr. Miller's report provided an accurate history of appellant's injury and is insufficient to disqualify his report as carrying the weight of the medical evidence.<sup>12</sup>

Accordingly, the July 1 and February 13, 2002 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC  
January 7, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>12</sup> *Id.*